No. 449

Office-Supreme Court, U.S.
FILED
SEP 2 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE ASSOCIATED PRESS et al.,
Appellants,

v.

EDWIN A. WALKER,
Appellee.

On Appeal from the Court of Appeal,
Second Circuit, State of Louisiana

JURISDICTIONAL STATEMENT

BILLY R. PESNELL
Post Office Box 1574
867 Texas Eastern Building,
Shreveport, Louisiana
Attorney for THE ASSOCIATED PRESS.

ASHTON PHELPS
Hibernia Bank Building,
New Orleans, Louisiana,
Attorney for THE TIMES-PICAYUNE
PUBLISHING COPORATION.

HARGROVE, GUYTON, VAN HOOK and RAMEY,
Post Office Box 1574
867 Texas Eastern Building
Shreveport, Louisiana
Of Counsel for THE ASSOCIATED PRESS.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Hibernia Bank Building
New Orleans, Louisiana
Of Counsel for THE TIMES-PICAYUNE
PUBLISHING CORPORATION.

LECOMTE, SHREVEPORT, LOUISIANA

INDEX

	Page
Jurisdictional Statement	1
Opinion Below	2
Jurisdiction	2
Questions Presented	5
Constitutional Provisions and Statutes Involved	6
Statement	7
The Questions Are Substantial	13
Proof of Service	32
Appendix A	33
Appendix B	53

CITATIONS

Cases

Age-Herald Publishing Co. v. Huddleston,
207 Ala. 40, 92 So. 193 (1921) 15, 16

American Railway Express Co. v. Levee,
263 U.S. 19, 44 S.Ct. 11 (1923) 3

Associated Press v. United States,
326 U.S. 1, 65 S.Ct. 1416 (1945) 26

Bailey v. Chapman, 15 Tex. Civ. App. 240,
38 S.W. 544 (1897) 17

Bantam Books, Inc. v. Sullivan,
372 U.S. 58, 83 S.Ct. 631 (1963) 25

Bates v. Little Rock,
361 U.S. 516, 80 S.Ct. 412 (1960) 25

Belo v. Wren, 63 Tex. 686 17

Dahnke-Walker Milling Co. v. Bondurant,
257 U.S. 282, 42 S.Ct. 106 (1921) 12

Duke of Brunswick v. Harmer,
14 Q.B. 185, 117 Eng. Rep. 72 (1849) 16

England v. Louisiana State Board of Medical Examiners, ... U.S. ..., ..., 84 S.Ct. 461 (1964) 13

Forman v. Mississippi Publishers Corporation,
195 Miss. 90, 14 So.2d 344 (1943) 16

Gregoire v. G. P. Putnam's Sons,
298 N.Y. 119, 81 N.E. 2d 45 (1948) 18

Grosjean v. American Press Co.,
297 U.S. 233, 56 S.Ct. 444 (1936) 24, 26, 30

Hartmann v. Time, Inc.,
166 F.2d 127 (3rd Cir. 1947) 19

Hennessey v. Campbell,
32 S.W.2d 390 (Tex. Civ. App. 1930) 17, 18

Houston v. Pulitzer Publishing Co.,
249 Mo. 332, 155 S.W. 1068 (1913) 13, 15

International Shoe Company v. Washington,
326 U.S. 310, 66 S.Ct. 154 (1945) 31

Johnson v. Langley,
57 S.W.2d 21 (Ky. 1933) 18

Julian v. Kansas City Star Co.,
209 Mo. 35, 107 S.W. 496 (1907) 13, 15

Kentucky Finance Corp. v. Paramount Auto Exchange Corp., 262 U.S. 544, 43 S.Ct. 636 (1923) 30

Lawrence v. State Tax Commission,
286 U.S. 276, 52 S.Ct. 556 (1932) 12

Light Pub. Co. v. Wurzback,
266 S.W. 188 (Tex. Civ. App. 1924) 18

Litzinger v. Pulitzer Publishing Company,
356 S.W.2d 81 (Mo. 1962) 15

Lovell v. City of Griffin,
303 U.S. 444, 58 S.Ct. 666 (1938) 26

Malloy v. Hogan,
....., U.S. ....., 32 L.W. 4507 (1964) 25

Marcus v. Search Warrants,
367 U.S. 717, 81 S.Ct. 1708 (1961) 25

McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199 (1957) 31

Mercantile Nat. Bank v. Langdeau,
371 U.S. 555, 83 S.Ct. 520 (1963) 3, 4, 5

Michigan-Wisconsin Pipe Line Co. v. Calvert,
347 U.S. 157, 74 S.Ct. 396 (1954) 3

Murdock v. Pennsylvania,
319 U.S. 105, 63 S.Ct. 870 (1943) 24

N.A.A.C.P. v. Button,
371 U.S. 415, 83 S.Ct. 328 (1963) 20, 25, 26

New York Times Company v. Sullivan,
376 U.S. 254, 84 S.Ct. 710 (1964) 22, 23, 26

O'Malley v. Statesman Printing Co.,
60 Idaho 326, 91 P.2d 357 (1939) 16

Palko v. Connecticut,
302 U.S. 319, 58 S.Ct. 149 (1937) 24

Pennekamp v. Florida,
328 U.S. 331, 66 S.Ct. 1029 (1946) 30

Power Mfg. Co. v. Saunders,
274 U.S. 490, 47 S.Ct. 678 (1927) 30

Saia v. People of the State of New York,
334 U.S. 558, 68 S.Ct. 1148 (1948) 24

Shelton v. Tucker,
364 U.S. 479, 81 S.Ct. 247 (1960) 25

Smith v. California,
361 U.S. 147, 80 S.Ct. 215 (1959) 22

Speiser v. Randall,
357 U.S. 513, 78 S.Ct. 1332 (1958) 23

State v. Briwa,
198 La. 970, 5 So.2d 304 (1941) 20

State v. Moore,
140 La. 281, 72 So. 965 (1916) 20, 22

State ex rel. Harz v. City of New Orleans,
227 La. 139, 78 So.2d 538 (1955) 5

Talley v. California,
362 U.S. 60, 80 S.Ct. 536 (1960) 26

Thomas v. Collins,
323 U.S. 516, 65 S.Ct. 315 (1945) 24

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943) 28

Yick Wo v. Hopkins,
118 U.S. 356, 6 S.Ct. 1064 (1886) 30

Constitution, Federal and State Statutes

United States Constitution
First Amendment ..... 6 et seq.
Fourteenth Amendment ..... 6 et seq.

28 U.S.C. § 1257(2) 3, 4

Louisiana Constitution of 1921, as amended
Art. 7, Sections 10 and 11 3

Louisiana Revised Statutes of 1950
Title 13, Section 4450 3
Title 14, Section 47 22

Louisiana Code of Civil Procedure
Art. 74 ..... 5 et seq.

Vernon's Annotated Texas Statutes
5 V.A.T.S., Art. 1995, § 29 17

Miscellaneous

Annual Survey of American Law (1962) 23

Cahn, *The Firstness of The First Amendment*, 65 Yale L. Jour. 464 (1956) 25

Clark, *Venue in Civil Actions — Texas* (1953), § 9, p. 11 27

1 Harper and James, *The Law of Torts* (1956), § 5.16, p. 394 ..... 17, 18

Libel and Slander, 27 Tex. Jur., § 65 at p. 716 17

Odgers, *Libel and Slander* (5th ed. 1911), pp. 616-617 18

Painter, *Republication Problems in the Law of Defamation*, 47 Va. L. Rev. 1131 (1961) 19

Prosser, *Interstate Publication*, 51 Mich. L. Rev. 959 (1953) 19

Prosser, *Law of Torts* (2nd ed. 1955), § 94, p. 599 17

Stern and Gressman, *Supreme Court Practice* (3rd ed. 1962), Sec. 3-4, at p. 67 13

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE ASSOCIATED PRESS et al.,
Appellants,

v.

EDWIN A. WALKER,
Appellee.

On Appeal from the Court of Appeal,
Second Circuit, State of Louisiana

JURISDICTIONAL STATEMENT

Appellants, The Associated Press and The Times-Picayune Publishing Corporation, appeal from the judgment of the Court of Appeal, Second Circuit, State of Louisiana, entered on February 13, 1964, in this action to recover damages for alleged libel, reversing and setting aside the judgment of the First Judicial District Court in and for Caddo Parish, Louisiana, which had sustained Exceptions of Improper Venue and ordered this action transferred from the Caddo Parish District Court to the Civil Dis-

trict Court in and for the Parish of Orleans, State of Louisiana, for further proceedings.

Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Court of Appeal, Second Circuit, State of Louisiana, is reported at 162 So.2d 437 (La. App. 1964). The memorandum decision of the Supreme Court of Louisiana refusing to grant the timely application of Appellants for Writs of Certiorari and Review, with Chief Justice Fournet and Associate Justice Hamlin dissenting, is reported at 164 So.2d 360 (June 8, 1964). Copies of the opinion of the First Judicial District Court in and for Caddo Parish, Louisiana, and its judgment rendered pursuant thereto, the opinion and judgment of the Court of Appeal, Second Circuit, State of Louisiana, and the memorandum decision of the Supreme Court of Louisiana refusing Appellants' application for Writs of Certiorari and Review are attached hereto as Appendix A.

JURISDICTION

The judgment of the Court of Appeal, Second Circuit, State of Louisiana, was entered in this action on February 13, 1964. Appellants timely filed an application for rehearing, which was denied by the Court of Appeal on April 13, 1964. Appellants then timely filed an application with the Supreme Court of Louisiana for

Writs of Certiorari or Review, but on June 8, 1964, that Court rejected the application, saying "Writ refused. The judgment is correct.", with Chief Justice Fournet and Associate Justice Hamlin dissenting. Notice of Appeal to the Supreme Court of the United States was filed on July 6, 1964, in the First Judicial District Court in and for Caddo Parish, Louisiana, which was the court then possessing the record in this action.

The jurisdiction of the Supreme Court of the United States to review the decision of the Court of Appeal, Second Circuit, State of Louisiana, by appeal is conferred by Title 28, United States Code, Section 1257(2). The judgment of the Court of Appeal, Second Circuit, State of Louisiana, was rendered by the highest court in Louisiana in which a decision could be had, since the jurisdiction of the Supreme Court of Louisiana to review that decision was and is discretionary, and since the Supreme Court of Louisiana refused to exercise its discretionary jurisdiction. See Article 7, Sections 10 and 11, Louisiana Constitution of 1921, as amended; Section 4450 of Title 13, Louisiana Revised Statutes of 1950. See also *American Railway Express Co. v. Levee*, 263 U.S. 19, 44 S.Ct. 11 (1923); *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 74 S. Ct. 396 (1954).

The jurisdiction of the Supreme Court of the United States to review the judgment of the Court of Appeal, Second Circuit, State of Louisiana, in this action is sustained by *Mercantile Nat. Bank v. Langdeau*, 371 U.S. 555, 83 S. Ct. 520 (1963). In *Langdeau*, this Court held:

> ". . . here the inquiry is only as to which state court has proper venue to entertain an action against two national banks. Nonetheless, a substantial claim, appealable under state law, is made that a federal statute, rather than a state statute, determines in which state court a national bank may be sued and, as in Curry, prohibits further proceedings against the defendants in the state court in which the suit is now pending. This is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action. Moreover, we believe that it serves the policy underlying the requirement of finality in 28 U.S.C. § 1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings. Accordingly, we note our jurisdiction to hear this appeal under § 1257(2) . . . ." *Mercantile Nat. Bank v. Langdeau*, 371 U.S., 558, 83 S.Ct., 522.

While *Langdeau* involved the interpretation and application of a federal statute and the Supremacy Clause of the Constitution, Section 1257 of Title 28, United States Code, does not make the standard of finality required to sustain the jurisdiction of the Supreme Court depend on the source of the federal right invoked to defeat the state statute. The standard of finality required by Section 1257 is the same regardless of whether the federal right asserted is based on the ". . . constitution, treaties or laws of the United States . . ." Hence, the fact that the *Langdeau* case turned on the construction of a federal statute is a

circumstance of no consequence, insofar as the standard of finality required for judicial review is concerned.

All of the pragmatic considerations which prompted this Court to hold that the judgment in *Langdeau* was final for the purpose of review are present in this case: The ultimate question involved on this appeal is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action. The parties to this action will be subjected to a long and complex trial which will be all for naught if the consideration of the preliminary question of venue is postponed until the conclusion of the proceedings. Indeed, it is precisely because of these considerations that Louisiana itself permits immediate appellate review of the questions involved here. The judgment below is not subject to further review in the state courts; the decision of the Court of Appeal, Second Circuit, State of Louisiana, which the Louisiana Supreme Court refused to review, will become res judicata. *State ex rel. Harz v. City of New Orleans*, 227 La. 139, 78 So.2d 538 (1955).

QUESTIONS PRESENTED

(1) Whether Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court of Appeal, Second Circuit, State of Louisiana, constitutes an unwarranted interference with Appellants' rights of free speech and freedom of the press and imposes an undue and unnecessary burden on Appellants in the exercise of their rights of free speech and freedom of the

press under the First and Fourteenth Amendments to the Constitution of the United States?

(2) Whether Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court of Appeal, Second Circuit, State of Louisiana, deprives Appellants of their rights to equal protection of the law and due process of law under Section 1 of the Fourteenth Amendment to the Constitution of the United States by:

(a) Giving a plaintiff seeking damages for libel in a case of this type privileges of venue not allowed by law to a plaintiff in actions for the recovery of damages for torts generally and subjecting Appellants to more onerous venue provisions than are applied to other defendants in tort actions generally;

a n d

(b) Subjecting Appellants to a miltiplicity of actions for what is practically and essentially a single alleged tort?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves the First Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States and Article 74 of the Louisiana Code of Civil Procedure, which are set forth in Appendix B attached hereto.

STATEMENT

Major General Edwin A. Walker, a resident of the State of Texas (hereinafter referred to as "Appellee"), filed this suit in Caddo Parish, Louisiana, against The Associated Press and The Times-Picayune Publishing Corporation (hereinafter referred to as "Appellants") to recover the sum of $3,000,000.00 as damages allegedly sustained by him as a result of certain defamatory news reports allegedly published by Appellants and circulated by newspaper, radio and television broadcasting media throughout Louisiana, the United States and the rest of the world in connection with the rioting incident to the admission of James H. Meredith, a Negro, to the University of Mississippi.(1) Appellant, The Associated Press, is a corporation organized under and existing pursuant to the laws of the State of New York. Appellant, The Times-Picayune Publishing Corporation, is a corporation organized under the laws of the State of Louisiana, with its registered corporate office located in Orleans Parish. The only office or place of business which either Appellant has in the State of Louisiana is located in Orleans Parish, and both Appellants were served with process there.

---

(1) This suit is one of three suits which General Walker has filed against The Associated Press and which are currently pending, based on the same alleged libelous news reports and dispatches, in which he has claimed damages totaling $6,000,000.00. In addition, General Walker has filed separate actions for damages against the St. Louis Post-Dispatch, the Louisville Courier-Journal and Atlanta Newspapers, Inc.

In his petition, Appellee alleges that The Times-Picayune Publishing Corporation published in its two newspapers, The Times-Picayune and The New Orleans States-Item, certain false, libelous and defamatory news reports concerning him which were allegedly furnished to it by The Associated Press. According to the petition, the newspapers were mailed to subscribers and distributed not only in Caddo Parish but throughout the State of Louisiana, other states of the United States and in foreign countries. Appellee, however, acknowledges and admits in his petition that both The Times-Picayune and The New Orleans States-Item are published in the City of New Orleans which, of course, is in Orleans Parish.

While Appellee alleges that the alleged defamatory statements were "published" by The Associated Press in Caddo Parish, he clearly means by this that the alleged defamatory news reports were transmitted to and received in Caddo Parish. Obviously, the alleged defamatory publications attributed to The Associated Press were not telegraphed or dispatched by The Associated Press from Caddo Parish, Louisiana, since The Associated Press does not have any office or place of business in Caddo Parish. This is made even clearer by the allegations in Article 2 of the petition that The Associated Press ". . . maintains a regional bureau in the City of New Orleans from which its agents and employees telegraph news information to newspapers and radio and television broadcasting stations in Caddo Parish, in the State of Louisiana, and elsewhere" and by allegations in Articles 8 and 9 of the petition that The Associated Press continued "to send" to newspapers

and radio and television broadcasting stations in Caddo Parish, Louisiana, from a point or points outside of Caddo Parish, Louisiana. Nowhere does the petition allege that any of the alleged defamatory reports were first placed into circulation in Caddo Parish.

Appellant, The Associated Press, promptly filed a petition to remove the case to the United States District Court in and for the Western District of Louisiana, Shreveport Division, under the provisions of Section 1441(c) of Title 28 of the United States Code (28 U.S.C.A. § 1441(c)) on the grounds that the complaint set forth separate and independent claims or causes of action against The Associated Press for which The Times-Picayune Publishing Corporation could not possibly be liable and that the joinder of The Times-Picayune Publishing Corporation as a party defendant on the separate causes of action was fraudulent and a sham designed only to defeat the right of The Associated Press to have the case litigated in a federal forum. However, on the motion of Appellee, the United States District Court remanded the case to the First Judicial District Court in and for Caddo Parish, Louisiana, for further proceedings.

In the Caddo Parish District Court, Appellants separately filed Exceptions of Improper Venue, together with certain other exceptions not under consideration here. Appellants also separately filed a Special Plea of Unconstitutionality directed at Article 74 of the Louisiana Code of Civil Procedure if it were construed, contrary to Appellants' con-

tention, to sustain venue in the First Judicial District Court in and for Caddo Parish, Louisiana. The Caddo Parish District Court (Woods, J.) sustained Appellants' Exceptions of Improper Venue and ordered the case transferred to the Civil District Court in and for Orleans Parish, Louisiana, for further proceedings. In taking this view of the matter, the Caddo Parish District Court found it unnecessary to pass on the remaining exceptions and Pleas of Unconstitutionality then pending. Judgment in accordance with the decision of the District Court was duly signed and entered.

Appellee then sought and obtained judicial review of the decision of the District Court by invoking the supervisory jurisdiction of the Court of Appeal, Second Circuit, State of Louisiana. Appellants insisted in that Court, as they did in the District Court, that Article 74 of the Louisiana Code of Civil Procedure would be unconstitutional under the First Amendment and Section 1 of the Fourteenth Amendment of the Constitution of the United States if it were interpreted, construed and applied so as to sustain the venue of the Court below. Nevertheless, and notwithstanding the Pleas of Unconstitutionality asserted by Appellants, the Court of Appeal construed Article 74 of the Louisiana Code of Civil Procedure so as to confer venue in a libel action upon any district court in any parish in which any copy of the alleged libelous news report was sent or circulated, and reversed the judgment of the District Court and remanded the case for further proceedings. Appellants' position with respect to the constitutionality of Article 74, as so interpreted, construed and

applied by the Court of Appeal, was again urged and presented in detail in their Application for a Rehearing in that Court, but to no avail for the Court denied the rehearing.

In a further effort to obtain relief from this adverse judgment, Appellants applied to the Supreme Court of Louisiana for Writs of Certiorari or Review, and assigned, as one of the errors requiring reversal, their contention that Article 74, as interpreted, construed and applied by the Court, constituted an abridgment of their rights under the First Amendment and Section 1 of the Fourteenth Amendment. More specifically, the point was presented to the Supreme Court of Louisiana, substantially as it had been presented to the Court of Appeal, in the following terms:

> "The Court of Appeal erred in failing to hold that Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by it in this case is an unconstitutional abridgment of petitioners' rights under Article 1, Section 2, of the Constitution of Louisiana and the First and Fourteenth Amendments of the Constitution of the United States, since it:
>
> "(a) Gives a plaintiff seeking damages for libel in a case of this type privileges of venue not allowed by law to a plaintiff in actions for the recovery of damages for an offense or a quasi offense generally and subjects petitioners to more onerous venue provisions than are applied to other litigants charged with an offense or a quasi offense generally and thereby deprives

petitioners of equal protection and due process of law; and

"(b) Constitutes an unwarranted interference with petitioners' rights of free speech and freedom of the press and imposes an undue and unnecessary burden on petitioners in the exercise of their rights of free speech and freedom of the press, and deprives petitioners of due process of law by subjecting petitioners to a multiplicity of actions for what is practically and essentially a single wrong, and by allowing plaintiff in a case of this type an essentially arbitrary and fundamentally unfair choice of forum for litigation."

The Supreme Court of Louisiana, with Chief Justice Fournet and Associate Justice Hamlin dissenting, declined to exercise its discretonary jurisdiction and refused to grant certiorari, saying "Writ refused. The judgment is correct."

While the Court of Appeal did not refer to or explicitly pass on the constitutional challenge directed by Appellants at Article 74 of the Louisiana Code of Civil Procedure as interpreted, construed and applied in this case, the Court's silence in this respect necessarily operated as a rejection of Appellants' constitutional objections, since the Court sustained the statute against Appellants' attack and applied it to their prejudice. Obviously, a refusal of the Court to decide the constitutional question is as much a denial of Appellants' constitutional rights as an erroneous decision would be. See *Lawrence v. State Tax Commission*, 286 U.S. 276, 52 S.Ct. 556 (1932); *Dahnke-Walker Mill-*

ing Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106 (1921); *England v. Louisiana State Board of Medical Examiners*, ... U.S. ...., 84 S.Ct. 461, 467 (1964); Stern and Gressman, *Supreme Court Practice* (3rd ed. 1962), Sec. 3-4, at p. 67.

THE QUESTIONS ARE SUBSTANTIAL

Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court of Appeal in this case, has a direct tendency to restrict and inhibit the disseminaton and circulation of information by newspapers and other mass communication media. As construed, interpreted and applied by the Court of Appeal, Article 74 gives a plaintiff in an action for an alleged libel the right to select as a forum for his suit any one of the sixty-four (64) parishes in the State of Louisiana to which any copy of the newspaper carrying the alleged libelous article may have been sent or received. The danger which this rule carries for newspaper publishers has been recognized time and time again by the highest courts of other states. In *Houston v. Pulitzer Publishing Co.*, 249 Mo. 332, 155 S.W. 1068 (1913), the Supreme Court of Missouri held unconstitutional a statute which would have permitted a plaintiff in a libel action to file suit against a publishing corporation in any county of the state in which the newspaper was circulated. The Supreme Court of Missouri in *Houston* overruled its earlier decision in *Julian v. Kansas City Star Co.*, 209 Mo. 35, 107 S.W. 496 (1907), and adopted as the opinion of the court the dissenting opinion filed by Justice Graves in the *Julian* case. In his vivid and eloquent dissent in *Julian*, Justice Graves wrote:

"It is broadly contended that under section 997 a plaintiff in this one class of cases has the right to select the forum of his trial and locate it in either of the 114 counties of the state, provided copies of the paper reach all of them; that he can leave the county of his residence, which is likewise the residence of the defendant, and where the first publication is made, and pick from the 114 counties one where the citizenship is such that to his mind indicates practical results in his suit. If such plaintiff be a Democrat, and is suing a paper of the Republican faith, he claims the right under this statute to go into a Democratic county, where perhaps the paper, on account of political views, is in bad odor, and there have a trial of the issue. If plaintiff be a Republican, and is suing a Democratic paper, under this contention he claims the right to lodge his complaint in the strongest Republican county of the state, where perhaps that paper, for political reasons, is in bad odor, and there, with those surroundings, have the measure of his damages bountifully meted out to him. So, also, if he be a brewer, and had been, in his judgment, defamed by some paper advocating the cause of temperance, or religion, he would claim the right to go to the 'wettest' county of the state, and there, surrounded by his friends and sympathizers, have justice meted out to him, and all in the name of the law. Vice versa, as to the forum and surroundings, were the plaintiff a believer in the cause of prohibition and the offender an organ published in the interest of the liquor business. And all this in the name of the law, which detests everything unreasonable, unjust, and unfair! And all this where no other class of suitors can claim such right, and in the name of equal protection and equal rights under the law! The

> maimed and crippled and the widows and orphans of those who have been killed by the negligent acts of corporations have, in suing the negligent corporation, no such broad privilege of selecting their forum. They cannot pick a county thoroughly unionized, where they may have the influence of organized labor in the trial of their cause. This cherished right of picking a forum is left solely to the individuals who have been damaged by the publication of a libel. . . ." *Julian v. Kansas City Star Co.*, supra, at p. 509.

The Supreme Court of Missouri, as late as 1962, reaffirmed its conclusion in the *Houston* case that "a statute that would allow one to sue a publishing corporation in any county he chose where the allegedly libelous publications were circulated would be unconstitutional." *Litzinger v. Pulitzer Publishing Company*, 356 S.W.2d 81 (Mo. 1962), p. 84.

In *Ag-Herald Publishing Co. v. Huddleston*, 207 Ala. 40, 92 So. 193 (1921), the plaintiff brought suit in Blount County for damages resulting from an alleged libel carried in the defendant's paper. The newspaper was printed and placed in circulation in Jefferson County, but copies were mailed to subscribers in Blount County. The plaintiff contended that the mailing of the copies of newspapers to subscribers in Blount County was a separate publication of the libel there, and that venue was properly laid under a statute similar to Article 74 of the Louisiana Code of Civil Procedure in Blount County. In rejecting this contention, the Supreme Court of Alabama declared:

> "We do not see how there can be any conflict of opinion as to the unfairness, injustice, or impolicy of permitting aggrieved persons, in this class of cases only, to select at their pleasure any judicial forum within the state where the political, religious, industrial, moral, or personal predilections of the local citizenship may readily furnish a jury whose biased views will probably be reflected, however sincerely, in a verdict favorable to them." *Age-Herald Publishing Co. v. Huddleston*, supra, at p. 198.

This language was quoted approvingly by the Supreme Court of Mississippi in *Forman v. Mississippi Publishers Corporation*, 195 Miss. 90, 14 So.2d 344 (1943), and the Supreme Court of Idaho in *O'Malley v. Statesman Printing Co.*, 60 Idaho 326, 91 P. 2d 357 (1939), in arriving at the same conclusion as the Alabama Supreme Court did in the *Huddleston* case.

The validity of these conclusions cannot be gainsaid. Article 74 of the Louisiana Code of Civil Procedure, as interpreted and applied by the Court of Appeal in this case, is nothing more than a codification of the early common-law rule of venue which, in turn, was based on the view expressed in *Duke of Brunswick v. Harmer*, 14 Q.B. 185, 117 Eng. Rep. 72 (1849), that each sale or delivery of a single copy of a newspaper or magazine was a distinct and separate publication of a libel therein contained. Thus, under the rule of the *Duke of Brunswick* case, each time a libelous article is brought to the attention of a third person, a new publication has occurred and each publication is a separate tort. See, Prosser, *Law*

of Torts (2nd ed. 1955), § 94, p. 599; 1 Harper and James, *The Law of Torts* (1956), § 5.16, p. 394. But as a rule for fixing the venue of libel actions, the old common law rule has been repudiated in the great majority of states, either by legislation or by the courts through the adoption of the "single" publication rule. Under the "single" publication rule, the publication of a defamatory statement in a single issue of a newspaper, or magazine, although the publication consists of thousands of copies widely distributed, is, in legal effect, one publication which gives rise to but one cause of action. Prosser, supra; 1 Harper and James, supra.

Time and experience have both set their face against the early common law rule of venue in libel cases. Texas, for example, at one time followed the early common law rule of venue in libel cases. See *Belo v. Wren*, 63 Tex. 686, and *Bailey v. Chapman*, 15 Tex. Civ. App. 240, 38 S.W. 544 (1897). But in 1919, Texas abolished the common law rule by a legislative enactment expressly limiting venue in actions for defamation to the county where either the plaintiff or defendant resided. See 5 V.A.T.S., Art. 1995, § 29; 27 Tex. Jur. verbo *Libel and Slander*, § 65 at p. 716. The reasons for the legislative change were summarized by Chief Justice Fly in *Hennessey v. Campbell*, 32 S.W.2d 390 (Tex. Civ. App. 1930), as follows:

> "The present law as to venue of libel cases was enacted to meet the wrong inflicted upon defendants, especially newspapers and periodicals, by the former statute in permitting suits in such cases to be prosecuted in any county in which the libel was published,

> that is, made known. It often became very oppressive in requiring parties to answer in counties far remote from their domiciles and in a community selected by the plaintiff, known to be adverse to the defendant in such cases. . . ." *Hennessey v. Campbell*, supra, at p. 391. See also *Light Pub. Co. v. Wurzback*, 266 S.W. 188 (Tex. Civ. App. 1924).

A similar experience in Kentucky resulted in legislation abolishing the common law rule of venue in cases of libel by newspapers and periodicals in 1910. See *Johnson v. Langley*, 57 S.W.2d 21 (Ky. 1933). Indeed, England itself has abandoned the rule. See Odgers, *Libel and Slander* (5th ed. 1911), pp. 616-617. Thus, experience has confirmed what reason has already demonstrated: Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court of Appeal in this case, constitutes a dangerous threat to protected freedom of speech and freedom of the press. The radical changes that have been brought about by modern methods of disseminating printed matter for which there is a widespread demand (see *Gregoire v. G. P. Putnam's Sons*, 298 N.Y. 119, 81 N.E. 2d 45 (1948); 1 Harper and James, *The Law of Torts* (1956), § 5.16, p. 394) have only served to increase the dangerous potentiality of the threat to freedom of the press which, as experience long ago proved, is inherent in such a rule.

But aside from this, Article 74 constitutes a serious threat to freedom of the press from another standpoint. Appellants strenuously urged the Courts below to follow the "single" publication rule in this case, but the Courts

refused to do so. It is now plain from their decision in this case that the Louisiana courts are going to adhere to the early common law rule that each sale or delivery of a copy of a newspaper is a separate and distinct publication of a libel therein contained which gives rise to a separate and distinct cause of action. This means, of course, that under Article 74, a plaintiff in an action for libel could file suit not only in any parish but also in every one of the 64 parishes in the State of Louisiana to which a single copy of the newspaper containing the alleged libelous article was sent. The menace which such a threat of a multiplicity of actions carries to the publisher is obvious and has been recognized by a number of authorities. See Prosser, *Interstate Publication*, 51 Mich. L. Rev. 959, 968-70 (1953); Painter, *Republication Problems in the Law of Defamation*, 47 Va. L. Rev. 1131, 1140-41 (1961). As the Third Circuit Court of Appeals pointed out in *Hartmann v. Time, Inc.*, 166 F. 2d 127 (3rd Cir. 1947):

> "We think that the rule enunciated by the court below, the so-called 'single publication' rule, is the preferable one and is recommended both by logic and by public policy. Public policy must regard the freedom of the press and while the law must exact penalties for libel the instruments of free and effective expression, newspapers and magazines which are published on a nationwide basis, should not be subjected to the harassment of repeated law suits. . . ." *Hartmann v. Time, Inc.*, supra, at p. 134.

It is proper to consider the possibility of a multiplicity of actions in determining the validity of Article 74 of the

Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Courts below, for this Court has held that "in appraising a statute's inhibitory effect upon (First Amendment) rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. . . ." *N.A.A.C.P. v. Button*, 371 U.S. 415, 432, 83 S.Ct. 328, 337-338 (1963).

In the field of criminal libel, Louisiana does follow the single publication rule and limits the venue of the prosecution to the parish in which the newspaper containing the alleged libelous article was printed and first placed into circulation. It does not permit the defendant to be prosecuted in every parish in which the alleged libel is circulated. *State v. Moore*, 140 La. 281, 72 S. 965 (1916); *State v. Briwa*, 198 La. 970, 5 So.2d 304 (1941). In *Moore*, the Supreme Court of Louisiana said:

> "The learned district attorney says in his brief that a verdict of the Twenty-Fourth judicial district court in and for the parish of East Feliciana, on the bills of indictment or information in this case, would free the defendants from prosecution on the same libelous matter in any other jurisdiction or in any other court of this state. That admission is an acknowledgment of the correctness of the proposition that only one offense was committed, if the article complained of was libelous, by the publication of the article in the Times-Picayune, no matter how many parishes or jurisdictions the paper circulated in. If what Daniel D. Moore did was a complete offense, and constituted only one offense, it was certainly committed in the city of New Orleans. If

the fact that a bundle of copies of the Times-Picayune, containing the alleged libelous article, was sent to the parish of East Feliciana conferred jurisdiction upon the district court of that parish to try the alleged offender for what he did in the city of New Orleans, it must be upon the theory that the sending of that bundle of papers to the parish of East Feliciana constituted an offense in that parish. If that be true, the sending of another bundle of the newspapers to the parish of Rapides constituted another offense in that parish, and the sending of another bundle of the newspapers to the parish of Plaquemine constituted another distinct offense there; and, on the same principle, the sending of each newspaper to each individual subscriber or purchaser was a distinct offense. It would lead to the anomalous proposition that as many distinct offenses were committed in as many different jurisdictions, by what Daniel D. Moore did in the city of New Orleans, as there were copies of the newspaper containing the alleged libelous article; that what Daniel D. Moore did in the city of New Orleans was multiplied into as many thousands of offenses on his part as there were subscribers and purchasers and readers of that issue of the Times-Picayune. To say that a prosecution and conviction by a court having jurisdiction in any parish where one of the newspapers found its way would protect the defendant from prosecution in any other parish does not answer the constitutional requirement that he shall be tried for what he did in the parish where the offense was committed, and in no other parish. That constitutional guaranty is worth very little indeed to the defendant, if the district court in every parish in the state has jurisdiction to try him for what he did in the

> city of New Orleans, even though the final judgment of any one of the courts would abate the prosecution in all the others. To recognize such an ubiguitous jurisdiction for the trial of what is virtually conceded to be only one offense, for which the defendant's liberty can be put in jeopardy only once, would let the technicalities hide the substance of the law and take the place of common sense. . . ." *State v. Moore*, supra, at pp. 975-976.

But the same considerations which impelled the Supreme Court of Louisiana to adopt the single publication rule in the field of criminal libel apply with equal, if not greater, force in the field of civil libel. There is no justification consistent with the First and Fourteenth Amendments which would support or permit the distinction made between civil libel and criminal libel in this respect. Indeed, as this Court recently observed, the law of civil libel is "a form of regulation that creates hazards to protected freedoms markedly greater than those that attend reliance upon the criminal law." *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 725 (1964). See Section 47 of Title 14, La. Revised Statutes of 1950.

We assume arguendo on this appeal that a State may regulate freedom of expression through its civil law of defamation, to some extent at least, consistently with the First and Fourteenth Amendments. But see *Smith v. California*, 361 U.S. 147, 80 S.Ct. 215 (1959) (concurring opinion of Mr. Justice Black). Nevertheless civil actions for defamation permitted and sanctioned by the State unquestionably constitute a form of state regulation which

creates grave hazards to freedoms protected by the First and Fourteenth Amendments. *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). See also *Annual Survey of American Law* (1962), p. 481. But it is one thing to say that a state may, to some extent, validly create a cause of action for damages in some cases of defamation; it is quite another matter to say that the cause of action so created may be enforced in any forum selected by the plaintiff in any — if not every — parish or county in the state to which any copy of the newepaper carrying the alleged defamatory news report may have been sent or received. As this Court, speaking through Mr. Justice Brennan, said in *Speiser v. Randall*, 357 U.S. 513, 78 S.Ct. 1332 (1958):

> "To experienced lawyers it is commonplace that the outcome of a lawsuit — and hence the vindication of legal rights — depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. And the more important the rights at stake the more important must be the procedural safeguards surrounding those rights. (Citation omitted) When the State undertakes to restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights — rights which we value most highly and which are essential to the workings of a free society. . . ." *Speiser v. Randall*, 357 U.S., 520-21, 78 S.Ct., 1339.

In our free society and system of government, there are no rights cherished or valued more highly than the freedoms guaranteed and protected by the First Amendment, including freedom of speech and freedom of the press. Of free speech, Mr. Justice Cardoza, speaking on behalf of this Court, has said ". . . it is the matrix, the indispensable condition, of nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. 319, 326, 58 S.Ct. 149, 152 (1937). This Court has said that the purpose of the constitutional guaranty of freedom of the press:

> ". . . was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines, and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. . . . A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Grosjean v. American Press Co.*, 297 U.S. 233, 250, 56 S.Ct. 444, 449 (1936).

Thus, the freedoms protected by the First Amendment have been accorded a preferred position by this Court. See, e.g., *Murdock v. Pennsylvania*, 319 U.S. 105, 115, 63 S. Ct. 870, 876 (1943); *Thomas v. Collins*, 323 U.S. 516, 530, 65 S.Ct. 315, 322 (1945); *Saia v. People of the State of New York*, 334 U.S. 558, 561, 68 S.Ct. 1148, 1150

(1948). See also Cahn, *The Firstness of The First Amendment*, 65 Yale L. Jour. 464 (1956). And, this Court has repeatedly and consistently held that the guarantees of the First Amendment, including freedom of speech and freedom of press, apply with the same force, and are enforceable, against the States under the Fourteenth Amendment according to the same standards that protect those rights against federal encroachment. *Malloy v. Hogan*, ... U.S. ....., 32 L.W. 4507 (1964).

Furthermore, this Court has recognized that "it is characteristic of the freedoms of expression in general that they are vulnerable to gravely damaging yet barely visible encroachments." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66, 83 S.Ct. 631, 637 (1963). The First Amendment freedoms "are delicate and vulnerable, as well as supremely precious in our society." *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338 (1963). Consequently, these freedoms are protected "not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. Little Rock*, 361 U.S. 516, 523, 80 S.Ct. 412, 416 (1960). In this area, state regulation in aid of a legitimate purpose must achieve it with a minimum interference with liberty. *Shelton v. Tucker*, 364 U.S. 479, 81 S.Ct. 247 (1960). A state is not free to adopt whatever procedures it pleases in dealing with expressions, such as obscenity or defamation, which it might regulate, without regard to possible consequences to constitutionally protected speech. *Marcus v. Search Warrants*, 367 U.S. 717, 81 S.Ct. 1708 (1961). This is because "The threat of sanctions may

deter (the) exercise (of First Amendment freedoms) almost as potently as the actual application of sanctions." *N.A.A.C.P. v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338 (1963).

Of course, the constitutional guarantee of freedom of press embraces the circulation of printed matter as well as the publication itself, for, as this Court has pointed out on several occasions:

> " 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' " *Talley v. California*, 362 U.S. 60, 64, 80 S.Ct. 536, 538 (1960); *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 669 (1938).

Indeed, beyond this, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U.S. 1, 20, 65 S.Ct. 1416, 1424-25 (1945); *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 718 (1964).

The venue statute involved here is calculated to reduce the press to a timid voice, and to eliminate the "uninhibited, robust and wide-open" debate to which this Court said, in *New York Times Company v. Sullivan*, supra, that our nation was committed. The statute, in effect, penalizes geographic circulation. The inhibitive effect of the venue statute involved here on protected freedom of the press is no less than the tax statute involved in *Grosjean v. American Press Company*, 297 U.S. 233, 56

S.Ct. 444 (1936), which this Court invalidated because of the tendency of the tax to restrict circulation. Indeed, the propensity of the venue statute involved here to inhibit and restrict circulation is far greater than the tax statute before this Court in *Grosjean*. The publisher could at least determine with certainty his liability for the tax, whereas here the publisher is faced with uncertain determinations on such questions as "truth" and "malice" in a forum selected by the plaintiff for no reason other than to place the greatest handicap possible on the publisher, with the concomitant risk of unlimited damage awards. The venue of an action is a matter of primary importance, since it "frequently means the difference in winning or losing a law suit." Clark, *Venue in Civil Actions — Texas* (1953), § 9, p. 11.

What justification can possibly be offered in support of a venue statute such as Article 74 of the Louisiana Code of Civil Procedure which, as interpreted, construed and applied here, would permit a plaintiff in a case of this type to arbitrarily select as a forum for his action any one — if not every one — of the 64 parishes in the State of Louisiana to which a single copy of the alleged defamatory report was sent or received and there have his case tried by jury? Appellants submit there is none, and the great majority of American states do not permit it. Surely, any interest that the State may legitimately have in regulating freedom of speech and freedom of the press does not require this exaction. As interpreted, construed and applied here, Article 74 of the Louisiana Code of Civil Procedure goes far beyond anything reason-

ably necessary to accomplish a legitmate purpose, and, in doing so, it shackles protected freedoms of speech and press. As this Court said in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 (1943):

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedom of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case." *West Virginia State Board of Education v. Barnette*, supra, at p. 1186.

The venue statute involved here has a direct tendency to obstruct, restrain and inhibit protected freedoms of

speech and press, and it is wholly unnecessary to accommodate any interest which the State may lawfully protect.

This brings us to a consideration of the question of equal protection of the laws. Much of what has already been said is also applicable here. It is apparent that Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court below, operates against newspapers and other mass communications media generally in this class of cases in a way that is radically different from the way in which it operates against other defendants in tort actions generally. It subjects Appellants in particular and other newspapers and mass communications media in general in this one class of actions to venue provisions much more onerous and burdensome than are applied to other litigants in tort actions generally. In no other class of actions, tort or otherwise, is a plaintiff permitted such a broad and wide latitude in the choice of a forum to hear his complaint. In terms of modern day circulation of even small newspapers, the difference is not simply a matter of degree; it assumes dimensions of a completely different magnitude. Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied by the Court below, not only interferes with, obstructs and restrains the exercise of constitutionally protected freedoms of speech and press but also deprives Appellants of equal protection of the law as well.

The constitutional guarantee of equal protection of the law is "a pledge of the protection of equal laws."

Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 1070 (1886). It protects corporations, as well as individuals, from arbitrary and invidious discrimination in legislative enactments or other state action, whether procedural or substantive in nature. *Grosjean v. American Press Co.*, 297 U.S. 233, 244, 56 S.Ct. 444, 447 (1936); *Pennekamp v. Florida*, 328 U.S. 331, 66 S.Ct. 1029 (1946); *Power Mfg. Co. v. Saunders*, 274 U.S. 490, 47 S.Ct. 678 (1927); *Kentucky Finance Corp. v. Paramount Auto Exchange Corp.*, 262 U.S. 544, 43 S.Ct. 636 (1923). In *Power Mfg. Co. v. Saunders*, supra, this Court held that an Arkansas statute which permitted an action against a foreign corporation to be brought in any county of the state deprived the defendant corporation of equal protection of the law, where the statute governing venue of actions against domestic corporations and individuals was much more restrictive. Similarly, in *Kentucky Finance Corp. v. Paramount Auto Exchange*, supra, this Court held that a Wisconsin statute which subjected a foreign corporation to a procedural rule much more onerous and burdensome than it applied to other suitors violated the equal protection clause of the Constitution. In the course of its decision in *Power Mfg. Co. v. Saunders*, this Court pointed out that:

> "It of course rests with the state to prescribe the venue of actions brought in her courts. But the exercise of this power, as of all others, must be in keeping with the limitations which the Constitution of the United States places on state action. Procedural statutes are not excepted, but must fall like others when in conflict with those limitations." *Power Mfg. Co. v. Saunders*, 274 U.S. 490, 495, 47 S.Ct. 678, 680 (1927).

These principles apply with equal force to the case at bar.

Appellants submit that this appeal presents substantial Federal questions with respect to the constitutionality of Article 74 of the Louisiana Code of Civil Procedure, as interpreted, construed and applied in this case. The questions presented here are important because the statute involved carries grave implications for protected freedoms of speech and press, not only from the standpoint of the publisher and instruments of communication but also from the standpoint of the public as well. Expanding concepts of "doing business" for jurisdictional standards (See *McGee v. International Life Insurance Company*, 355 U.S. 220, 78 S.Ct. 199 (1957), and *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945), as well as radical changes that have been brought about in recent years by modern methods of disseminating printed matter for which there is a widespread demand, underscore the importance of the questions presented.

Respectfully submitted,

Billy R. Pesnell

Billy R. Pesnell
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana.
Attorney for The Associated Press.

Ashton Phelps (BRP)

Ashton Phelps
Hibernia Bank Building,
New Orleans, Louisiana.
Attorney for The Times-Picayune
Publishing Corporation.

PROOF OF SERVICE

I, BILLY R. PESNELL, attorney for THE ASSOCIATED PRESS, one of the defendants and joint appellants herein, and a member of the bar of the Supreme Court of the United States, certify that on the 1st day of September, 1964, I served a copy of this Jurisdictional Statement, including Appendices attached thereto, on Edwin A. Walker, plaintiff and appellee herein, by mailing the same in a duly and properly addressed envelope, first class postage prepaid, to his attorney of record:

Mr. W. Scott Wilkinson,
Wilkinson, Lewis, Woods and Carmody,
Post Office Box 1707,
Shreveport, Louisiana.

Shreveport, Louisiana, this 1st day of September, 1964.

Billy R. Pesnell
Billy R. Pesnell

APPENDIX A

OPINIONS, JUDGMENTS AND DECREES BELOW

(a) Opinion of the District Court

EDWIN A. WALKER

VS.

ASSOCIATED PRESS, ET AL

NUMBER 160,536

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

OPINION ON EXCEPTION OF IMPROPER VENUE.

The plaintiff, a resident of the State of Texas, filed this suit against the Associated Press and the Times Picayune Publishing Corporation to recover the sum of Three Million Dollars ($3,000,000.00) as damages sustained by the plaintiff as a result of certain defamatory statements allegedly published by the defendants. The Associated Press is a corporation organized under and existing pursuant to the laws of the State of New York. Its only office and place of business in the State of Louisiana is located in Orleans Parish. The Times Picayune Publishing Corporation is a corporation organized under the laws of the State of Louisiana with its registered corporate office and principal place of business located in Orleans Parish.

The plaintiff alleges that the Times Picayune Publishing Corporation published in its two newspapers, the Times Picayune and the New Orleans States-Item, certain false, libelous, and defamatory news reports concerning the plaintiff which were furnished to it by the Associated Press. The petition alleges that these newspapers were mailed to subscribers and distributed in Caddo Parish although both papers are published in the City of New Orleans. The petition also alleges that these newspapers were circulated and delivered to subscribers, news stands, and news agencies not only in Caddo Parish but throughout the State of Louisiana and other states of the United States and in foreign countries. The plaintiff claims the libelous statements and publications made by both defendants herein were intended and calculated to convey and did convey to the readers thereof defamatory imputations on petitioner injurious to his reputation and exposed him to public hatred, contempt, and ridicule.

C. C. P. Article 42 says: "The general rules of venue are that an action against:

> (2) A domestic corporation, or a domestic insurer, shall be brought in the parish where its registered office is located;
>
> (5) A foreign corporation not licensed to do business in the state shall be brought in a parish where the process may be, and subsequently is, served on the defendant."

C. C. P. Article 74 says: "An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful

conduct occurred, *or in the parish where the damages were sustained.*"

The early common law rule which originated in 1849 was that each sale or delivery of a single copy of a newspaper or magazine was a distinct and separate publication of the libel therein contained and gave rise to a separate cause of action. This rule was set out in the case of *Duke of Brunswick vs. Harmer*, 117 Eng. Rep. 72, and under it each time a libelous article is brought to the attention of a third person a new publication has occurred and each publication is a separate tort.

The great majority or American courts have now rejected the rule of the Duke of Brunswick case and adopted what is known as a "single publication" rule. This single publication rule says in effect that the publication of a defamatory statement in a newspaper or magazine although such publication consists of thousands of copies widely distributed, is in legal effect one publication which gives rise to one cause of action.

In the case of *Brian vs. Harper* 144 La. 585, 80 So. 885, our State Supreme Court said, "It is too well settled to require citation of authority that a libel committed by publication in a newspaper is accomplished when the publication goes into circulation." Therefore, under this authority together with C. C. P. Articles 42 and 74 there can be no question but that the courts of Orleans Parish would have jurisdiction in this case. However, the plaintiff argues that under C. C. P. Article 74 and the cases of *Vicknair vs. Daily States Publishing Company*,

144 La. 809, 81 So. 324, and *Mulina vs. Item Company*, 217 La. 842, 47 So.2d 560, the courts of Caddo Parish also have jurisdiction over this question.

In the case of *Vicknair vs. Daily States Publishing Co.* our Supreme Court held that a party who lived in Jefferson Parish could bring a suit against the Daily States, which was domiciled in Orleans Parish, in Jefferson Parish for an alleged libelous publication. It is interesting to note in the Vicknair case that the petition alleged only such damages as was suffered by the plaintiff in Jefferson Parish and did not seek to recover damages outside of that parish. Our Supreme Court also held, to the same effect, in the *Mulina vs. Item Company* case where the sheriff of Washington Parish brought a suit against the Orleans Parish newspaper for libel in Washington Parish. Although the petition in the Mulina case in not quoted, it is obvious from reading the case the plaintiff was only seeking damages that occurred to him in Washington Parish. Therefore it seems to us if the aggrieved party wishes to confine his damage to that sustained in one parish he may do so under these decisions. However that is not the plaintiff's purpose in the present case. As we understand the plaintiff's position, he is seeking to recover damages in Caddo Parish for injury to his reputation not only in this parish, but throughout the State of Louisiana, the United States, and foreign countries. Under the provision of C. C. P. Article 74 which says an action for damages for an offense may be brought in *the* parish where the *damages* were sustained, and the authorities herein above cited, we think the plaintiff could only

maintain this suit in Caddo Parish for such damages as were sustained in this parish.

> C. C. P. Article 121 provides: "When an action is brought in a court of improper venue, the court may dismiss the action, or in the interest of justice trar fer it to a court of proper venue."

Therefore for the above and foregoing reasons this case is hereby ordered transfered to the Civil District Court in and for the Parish of Orleans.

There are several other pleadings which have been filed in this case. A decision on which we think should await the final determination of the question of proper venue.

.....

J U D G E

December 11, 1963

(b) Judgment of the District Court

EDWIN A. WALKER

vs.

THE ASSOCIATED PRESS et al.

No. 160,536

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

JUDGMENT

This cause having come on to be heard on November 26, 1963, on Exceptions of Improper Venue, Exceptions of Improper Cumulation of Actions and Misjoinder of Party Defendants and Exceptions of Vagueness and Ambiguity of Petition, filed separately by both defendants, The Associated Press and the Times Picayune Publishing Corporation, and Exceptions of Insufficien y of Citation and Service of Process filed by defendant, the Times Picayune Publishing Corporation, after having been regularly set down for argument, and the cause having been duly submitted to the Court for adjudication, and the Court considering the law and the evidence to be in favor of defendants, The Associated Press and the Times Picayune Publishing Corporation, on the Exceptions of Improper Venue, for the reasons assigned in the written opinion of this Court dated December 11, 1963, and the Court considering it unnecessary to decide at this time the other exceptions filed by defendants,

IT IS ORDERED, ADJUDGED and DECREED that the Exceptions of Improper Venue filed by defendants,

The Associated Press and the Times Picayune Publishing Corporation, be and they are hereby sustained.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this cause be and it is hereby ordered transferred to the Civil District Court in and for the Parish of Orleans, State of Louisiana, pursuant to the provisions of Article 121 of the Louisiana Code of Civil Procedure and LSA R.S. 13:3271 - 13:3275, provided that the plaintiff shall timely pay all costs and fees required by law to be paid in connection with the transfer and do all other things required by law to be done by him, within the delays, if any, allowed therefor, in order to effectuate the transfer of this cause to the Civil District Court in and for the Parish of Orleans, State of Louisiana, saving and reserving to defendants, however, all of their rights under the Exceptions of Improper Cumulation of Actions, Exceptions of Misjoinder of Party Defendants and Exceptions of Vagueness and Ambiguity of Petition heretofore filed herein by both defendants and the rights of the Times Picayune Publishing Corporation under the Exceptions of Insufficiency of Citation and Service of Process heretofore filed herein by it, without prejudice in any way by reason of the transfer herein ordered.

JUDGMENT RENDERED, READ and SIGNED in Open Court this 17th day of December, 1963.

/s/ William F. Woods

JUDGE,
First Judicial District Court,
Caddo Parish, Louisiana.

(c) Opinion and Judgment of Court of Appeal, Second Circuit, State of Louisiana

No. 10161

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

EDWIN A. WALKER, Plaintiff-Relator
v.
THE ASSOCIATED PRESS and
THE TIMES-PICAYUNE
PUBLISHING CORPORATION,
Defendants-Respondents

In re Edwin A. Walker, plaintiff, applying for writs of certiorari, mandamus, and prohibition to the First Judicial District Court in and for Caddo Parish, Louisiana.
Hon. William F. Woods, Judge

Wilkinson, Lewis, Woods & Carmody,
Attorneys for Plaintiff-Relator
Hargrove, Guyton, Van Hook and Ramey,
Attorneys for The Associated Press,
Defendant-Respondent
Phelps, Dunbar, Marks, Claverie & Sims,
Attorneys for
The Times-Picayune Publishing Corporation,
Defendant-Respondent

Hon. George W. Hardy, Jr.
Hon. Edward L. Gladney
Hon. H. W. Ayres
Hon. James E. Bolin
Judges

AYRES, J.

This is an action in tort instituted against the defendants in the First Judicial District Court in and for Caddo Parish, Louisiana. Plaintiff seeks to recover damages for libel.

Writs were issued under our supervisory powers to permit a review of and to inquire into the validity of an order sustaining an exception of improper venue of the court and transferring this cause, under the provisions of C.C.P. Art. 121, to the Civil District Court in and for the Parish of Orleans.

The defendant The Times-Picayune Publishing Corporation, publisher of both The Times-Picayune and the New Orleans States-Item, morning and afternoon daily newspapers, respectively, is a Louisiana corporation with its domicile and principal place of business in the City of New Orleans, Orleans Parish, Louisiana. The defendant The Associated Press, a corporation organized and created under the laws of the State of New York, although not licensed to do business in this State, has an office located in and is doing business in the City of New Orleans, Orleans Parish, Louisiana.

The contention that the First Judicial District Court in and for Caddo Parish, Louisiana, has jurisdiction of this cause of action and is a court of proper venue is predicated on the fact that the defendants published and circulated certain defamatory statements concerning plaintiff in Caddo Parish; that The Associated Press gathered the news which was sent by teletype to newspapers, radio

and television stations in Louisiana, including those in Caddo Parish, as well as The Times-Picayune in New Orleans; and that The Times-Picayune Publishing Corporation published and circulated the libelous matter furnished it by its codefendant in newspapers which it sold and distributed in Caddo Parish, Louisiana. In this regard, plaintiff's petition specifically alleges:

> "The Associated Press operates a news gathering and news disseminating business and in such business employs agents in Louisiana, in other states of the Union, and in foreign countries for the purpose of gathering news which it dispatches to various newspapers, radio broadcasting stations and television broadcasting stations in Louisiana, in other states and in other countries. For such services this defendant makes charges and collects fees which produce a large profit. For such purposes said defendant maintains a regional bureau in the City of New Orleans from which its agents and employees telegraph news information to newspapers and radio and television broadcasting stations in Caddo Parish, in the State of Louisiana, and elsewhere.
>
> "The Times Picayune Publishing Corporation publishes in the City of New Orleans two daily newspapers, the morning newspaper being known as the Times Picayune, and the afternoon newspaper being known as the New Orleans States-Item; both of its said newspapers are mailed to subscribers in Shreveport and Caddo Parish and are distributed in said State and Parish through news agencies and news stands located therein. In addition the said newspapers are distributed throughout the State of Louisiana, in other states of the Union, and in

foreign countries with a circulation of several million newspapers daily."

The general rule is that an action against a domestic corporation shall be brought in the parish where its registered office is located (C.C.P. Art. 42 (2)), the parish of its domicile (LSA-R.S. 12:37 (A)), and that an action against a foreign corporation not licensed to do business in this State shall be brought in the parish where process may be, and is, served on the defendant (C.C.P. Art. 42 (5)). Under the statement of facts recited hereinabove, the Civil District Court of the Parish of Orleans would, of course, under the general rule, constitute a court of proper venue in which this action could be maintained.

However, there are exceptions to the aforesaid general rule. For instance, under C.C.P. Art. 74, it is stated, so far as pertinent, that

"An action for the recovery of damages for an offense or quasi offense may be brought in the parish *where the wrongful conduct occurred*, or in *the parish where the damages were sustained*." (Emphasis supplied.)

A similar provision, although not as broad as the provisions in the Code of Civil Procedure, was contained in Art. 165 of the Code of Practice prior to the adoption of the Code of Civil Procedure.

Under the provisions of the Code of Practice, it was held, in Vicknair v. Daily States Pub. Co., Limited, 144 La. 809, 81 So. 324, that an action for damages for

libel might be brought in the parish where a newspaper containing the libelous matter was circulated. An exception to the jurisdiction of the court predicated upon the fact that the defendant was domiciled in the Parish of Orleans was overruled, whereupon the defendant applied to the Supreme Court for writs to prevent further proceedings by the District Court of Jefferson Parish. Plaintiff's petition alleged:

> "Now your petitioner shows that said Daily States Publishing Company, Limited, through its agents, circulated in the parish of Jefferson said false and malicious libel of and concerning your petitioner's said minor daughter, and that thereby the petitioner's said daughter has suffered damages in the sum of fifteen thousand dollars."

Although the newspaper was obviously printed in Orleans Parish, the court concluded that the circulation of the newspaper in Jefferson Parish by defendant through its agents was essentially a part of the alleged libelous acts or facts, and, therefore, under the language of Art. 165 of the Code of Practice, paragraph 9, providing that, in cases where any corporation shall commit trespass, or do or fail to do anything for which an action for damage lies, it may be "sued in the parish where such damage is done or trespass committed" the court had jurisdiction. In this regard, the court stated:

> "If defendant circulated or caused to be circulated the matter in question, and if it be libelous, and if the plaintiff's daughter has been damaged thereby, it would seem that, under the provisions of law just

> quoted, the courts of that parish would have jurisdiction to determine the matter."
> (81 So. 324, 325.)

Therefore, the ruling of the trial court, of which defendant complained, was upheld. The matter was again before the court, under the same title, 153 La. 676, 96 So. 529. In that opinion, it was stated:

> "The exception to the jurisdiction of the Twenty-Eighth judicial district court for the parish of Jefferson, was disposed of by proof of publication of said libel in the parish of Jefferson on the trial of the case."
>
> (96 So. 529, 530.)

The defendants are sued as joint tort-feasors. Plaintiff's petition alleges that The Associated Press was the author of the libelous matter which it presented to The Times-Picayune Publishing Corporation for publication, and that the latter published the libel and circulated its publications containing the libel in Caddo Parish and elsewhere. An action against joint or solidary obligors may be brought in any parish where such action may be maintained against either.

This conclusion is in accord with the provisions of C.C.P. Arts. 43, 45, and 73. The general rules relative to venue, as contained in Art. 42, are subject to the exceptions provided in Arts. 71 through 83 and as otherwise provided by law (C.C.P. Art. 43). C.C.P. Art. 45 provides that, where there is a conflict between two or more of Arts. 42 and 71 through 77, the plaintiff may bring the

action in any venue provided by any applicable article. Such applicable article is Art. 74 under which, as heretofore observed, an action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or in the parish where the damages were sustained.

This rule is clearly applicable to actions against joint tort-feasors. It would indeed be an anomaly to hold that, whereas each of two or more trespassers or wrongdoers may be sued in the parish where the wrongful conduct occurred or in the parish where the damages were sustained, an action against them jointly, or in solido, could not be maintained in such parish. Such, clearly, was not the legislative intent.

In Wisemore v. First Nat. Life Ins. Co., 190 La. 1011, 183 So. 247, an insurance company and its agent were sued jointly and in solido because of certain alleged slanderous statements made by the agent in the course of his principal's business. The court held that the suit could be brought at the domicile of either one of the parties defendant or at the place where the slanderous statements were made. Cited by the court as authority was the case of Jones v. Maestri, 170 La. 290, 127 So. 631, 632, wherein it was stated:

> "Joint tort-feasors are solidarily liable and may be sued jointly either in the parish where the tort was committed or at the domicile of any one of the joint tort-feasors. Civ. Code art. 2324; Code of Practice, art. 165, §§ 6, 8 and 9, as amended by Act

130 of 1926; Rathborne Lumber Co. v. Cooper, 164 La. 502, 114 So. 112."

See, also:

Gardiner v. Erskine et al,
170 La. 212, 127 So. 604.

In Mulina v. Item Co., Inc., 217 La. 842, 47 So.2d 560, the plaintiff brought an action in the Twenty-Second Judicial District Court for Washington Parish, Louisiana, for damages for an alleged libel appearing in the May 17, 1947, issue of the New Orleans Item. At the time of the publication, plaintiff was sheriff of Washington Parish. The origin of the publication was at the domicile of the newspaper in the City of New Orleans, Orleans Parish, Louisiana. To plaintiff's action, defendant filed an exception to the jurisdiction of the court ratione personae. This exception was overruled by the district court, which ruling was upheld by the Supreme Court.

The fact that plaintiff is not a resident of Caddo Parish does not divest the court of that Parish of jurisdiction to redress wrongs committed against him there. None of the decisions quoted sustained the jurisdiction of the trial court on the premise that plaintiff was a resident of the parish in whose court the action was instituted. To the contrary, venue was upheld because the libel was circulated there.

Likewise, C.C.P. Art. 74 makes no reference, in fixing venue, to plaintiff's residence but rather to the locus of the wrongful conduct or damage. From this

article, it clearly appears that an action in tort may be brought in the parish *where the wrongful conduct occurred*, or in the parish *where the damages were sustained.*

The wrongful conduct, the circulation of the libel, is shown to have occurred in Caddo Parish; damages to plaintiff were also shown to have been sustained in that Parish. It appears, from the written opinion, the trial court was of the opinion that the court had jurisdiction of this action so far as the same relates to damage sustained in that Parish. In this regard, reference was made to the Vicknair and Mulina cases, supra, wherein it was stated that obviously the plaintiffs were seeking only such damages as occurred to them in the parishes in which they lived. As we appreciate these cases, we do not understand that the damages recoverable were limited to the parish where the suit was filed or that plaintiff's claim must be limited to damages suffered at his place of residence.

No such limitation is contained in C.C.P. Art. 74. This article, as stated, establishes venue in the parish where the wrongful conduct occurred, that is, in this case, in the parish where the libel was circulated. Actions for defamation are generally considered transitory, and the provision "where the damages were sustained" of C.C.P. Art. 74 is in the alternative.

Nor does the provision of C.C.P. Art. 74 limit the damages recoverable to those sustained only in the parish where the suit is filed. The general rule supports this view. Thus, in 53 C.J.S., p. 241, "Libel and Slander," § 153, "Jurisdiction and Venue," it is stated:

* * *

"An action may lie in one state for words published in another state where such words are slanderous at common law, or are actionable by the law of the forum, in the absence of proof of the law of the state in which published, or are actionable by the laws of such other state. * * *"

Nor do we find any basis for defendants' complaint that, under C.C.P. Art. 74, plaintiff may not only maintain an action in Caddo Parish but also in every parish of the state in which defendants' publications were circulated. The all-inclusive character of plaintiff's action excludes any basis for such a fear or apprehension, for C. C. P. Art. 531 and 532 provide the defendants with appropriate relief. These articles provide:

Art. 531.

"When two or more suits are pending in a Louisiana court or courts on the same cause of action, between the same parties in the same capacities, and having the same object, the defendant may have all but the first suit dismissed by excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all."

Art. 532.

"When a suit is brought in a Louisiana court while another is pending in a court of another state or of the United States on the same cause of action, between the same parties in the same capacities, and having the same object, on motion of the defendant or on its own motion, the court may stay all

> proceedings in the second suit until the first has been discontinued or final judgment has been rendered."

Moreover, if the action proceeds to judgment, the defendants would be adequately and fully protected under the principle and plea of res judicata. LSA-C.C. Art. 2286 provides:

> "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

Moreover, defendants, as to actions which may be brought in other states or jurisdictions, are further protected by the full faith and credit clause of the Constitution of the United States, Art. IV, Sec. 1, which provides that

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. * * * *"

For the reasons assigned, we conclude that the District Court for Caddo Parish is a court of proper venue and that it was error to transfer this cause to the Civil District Court of Orleans Parish.

Therefore, it is now Ordered, Adjudged, and Decreed that the writs of certiorari, prohibition, and mandamus heretofore issued herein are perpetuated and made final; and, accordingly,

It is further Ordered, Adjudged, and Decreed that the judgment sustaining the exceptions of improper venue filed and urged by the defendants, The Associated Press and The Times-Picayune Publishing Corporation, be, and it is hereby, annulled, avoided, reversed, and set aside, and said exceptions are now overruled; and

It is further Ordered, Adjudged, and Decreed that the order transferring this cause to the Civil District Court in and for the Parish of Orleans, State of Louisiana, be, and the same is hereby, annulled, avoided, reversed, and set aside; and, accordingly, this cause is hereby remanded to the Honorable, the First Judicial District Court in and for Caddo Parish, Louisiana, for further proceedings consistent with the views herein expressed and in accordance with law.

The defendants are taxed with such costs as have been incurred in this court; the taxation of all other costs are to await final determination of this cause.

Reversed and remanded.

(d) Memorandum decree of Supreme Court of Louisiana

SUPREME COURT OF LOUISIANA
New Orleans, 70112
June 8, 1964
No. 47,286
EDWIN A WALKER
v.
THE ASSOCIATED PRESS and
THE TIMES-PICAYUNE PUBLISHING
CORPORATION

In re: The Associated Press and The Times-Picayune Publishing Corporation applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Caddo

---

Writ refused.
The judgment is correct.

/s/ JBH
/s/ FWH
/s/ EHMcC
/s/ FWS

FOURNET, C. J., is of the opinion the writ should be granted.

HAMLIN, J., is of the opinion the writ should be granted.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, June 8, 1964
HAROLD A. MOISE, JR.
Deputy Clerk

APPENDIX B

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions:

The First Amendment to the Constitution of the United States provides as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutory Provisions:

Article 74 of the Louisiana Code of Civil Procedure provides as follows:

> "An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to

enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.

"As used herein, the words 'offense or quasi offense' include a nuisance and a violation of Article 667 of the Civil Code. As amended Acts 1962, No. 92, § 1.

"Comments

"(a) See Comments under original article.

"(b) Amended to clarify the rules of venue with respect to actions to enjoin the commission of a wrongful act; to recover damages resulting from, or to abate, a nuisance; and to recover damages for a violation of Art. 667 of the Civil Code.

"(c) Prior to amendment, it was doubtful whether an action to enjoin the commission of a wrongful act could be brought in the parish where the wrongful conduct occurred, or might have occurred. Prior to the adoption of this code, such an action might have been brought either at the domicile of the defendant, or in the parish where the wrongful act occurred, or was threatened. New Orleans v. United Cab Owners, 232 La. 1110, 96 So.2d 14 (1957). This amendment retains this jurisprudential rule.

"(d) The appellate courts had held in at least one case, and intimated in several others, that an action brought to recover damages under Art. 667 of the Civil Code was not a 'tort'. Loesch v. R. P. Farnsworth & Co., 12 So.2d 222 (La.App.1943). See, also, Devoke v. Yazoo & M. V. R. Co., 211 La. 729, 30 So.2d

816 (1947); Fontenot v. Magnolia Petroleum Co., 227 La. 866, 80 So.2d 845 (1955); Modica v. Employers Casualty Co. 231 La. 1065, 93 So.2d 659 (1957). Similarly, there had been at least dictum in two cases that a nuisance is not considered a tort under Louisiana law. See Devoke v. Yazoo & M. V. R. Co., supra; Fontenot v. Magnolia Petroleum Co., supra. Neither of these positions accords with modern American tort law. Cf. Restatement of Torts §§ 519-524; Id., Chapter 40, Scope and Introductory Comment. Further, these positions have been criticized as conflicting with recognized classifications of Louisiana law. See Stone, The Loesch Case and Article 667, 17 Tul.L.Rev. 596 (1943); Campbell, The Work of the Louisiana Supreme Court for the 1954-1955 Term—Torts and Workmen's Compensation, 16 La. L. Rev. 267 (1956).

"One of the purposes of this amendment was to make it clear that, at least for venue purposes, both a nuisance and a violation of Art. 667 of the Civil Code are included within the terms 'offense or quasi offense' as used in this article.

"(e) Insofar as this article is concerned, the venue of an action to enjoin the commission of an offense or quasi offense is restricted to the parish where the wrongful conduct occurred or may occur. This was done to require the most convenient forum in such cases, both for determining whether wrongful conduct had or would occur, and determining whether there had been a violation of an injunctive

order previously issued by the trial court. If the plaintiff seeks both damages and injunctive relief, he may always bring the action in the parish where the wrongful conduct occurred."

Prior to its amendment in 1962, Article 74 of the Louisiana Code of Civil Procedure provided that:

"An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained.

Source: C.P. Art. 165(9).
Cross References: Arts. 43, 45, 4839.

"Comments

"Several changes are made by this article. The source article applied to acts of commission of individuals, partnerships, and corporations, but to acts of omissions of corporations only. See Police Jury v. Texas & P. R. Co., 122 La. 388, 47 So. 692 (1908); Tripani v. Meraux, 184 La. 66, 153 So. 453 (1936). The 'wrongful conduct' of the above article applies to acts of both omission and commission, and applies equally to all defendants.

"The source article was interpreted as applying to actions for damages ex contractu as well as those ex delicto. City of Lafayette v. Wells, Fargo & Co., 129 La. 323, 56 So. 257 (1911); O'Brien v. Delta Air Corporation, 188 La. 911, 178 So. 489 (1938); T. A. Dubell v. Union Central Life Ins. Co., 211 La.

167, 29 So.2d 709 (1947). As this rule was considered very difficult to apply, the above article limits its application to damages resulting from offenses and quasi offenses."

Office-Supreme Court, U.S.
FILED
SEP 25 1964
JOHN F. DAVIS, CLERK

No. 449

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE ASSOCIATED PRESS et al.,
Appellants,

v.

EDWIN A. WALKER
Appellee.

On Appeal from the Court of Appeal,
Second Circuit, State of Louisiana

APPELLEE'S MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM

W. SCOTT WILKINSON
Post Office Box 1707
Shreveport, Louisiana

CLYDE J. WATTS
219 Couch Drive
Oklahoma City, Oklahoma

Attorneys for EDWIN A. WALKER

LECOMTE, SHREVEPORT, LOUISIANA

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE ASSOCIATED PRESS et al.,

Appellants,

v.

EDWIN A. WALKER

Appellee.

On Appeal from the Court of Appeal,
Second Circuit, State of Louisiana

APPELLEE'S MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM

The Appellee moves the Court to dismiss the appeal herein or in the alternative to affirm the judgment of the Court of Appeal of the Second Circuit of Louisiana on the ground that the appeal does not present a substantial federal question and is precluded by the previous decisions of this Court.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

This appeal raises the question as to whether or not Article 74 of the Louisiana Code of Civil Procedure is violative of the rights of free speech and freedom of the press guaranteed under the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment. The statute in question reads as follows:

> "Art. 74. Action on offense or quasi offense
> An action for the recovery of damages for an offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained."

The facts and the proceedings in the Court below are set forth in pages 7 et seq. of the Appellants' brief. They may be summarized as follows:

The Plaintiff-Appellee brought this suit in the District Court of Caddo Parish, Louisiana, for damages against The Associated Press which has its chief bureau in New Orleans, and The Times-Picayune Publishing Company which publishes The Times-Picayune and The New Orleans States-Item and has its domicile in Orleans Parish. It is alleged that The Associated Press sent out of its New Orleans office news releases to newspapers throughout the State of Louisiana and elsewhere and particularly into Shreveport in Caddo Parish, the forum where this suit has been brought. It is further alleged that The Associated Press supplied news items to The

Times-Picayune Publishing Company, its co-defendant, which contained libellous and untrue statements of which were damaging to the character and reputation of the plaintiff. The venue selected by the plaintiff, being in the parish where the libellous matter was published and distributed, was sustained by the state courts in view of the codal provision permitting such a suit to be brought either in the parish where the wrongful conduct occurred or in the parish where the damages were sustained. Under the allegations of the plaintiff's petition the damages were sustained in Caddo Parish and the plaintiff suffered injuries in that parish.

ARGUMENT

This Court has repeatedly held that the venue of civil actions is a matter within legislative discretion and that the Fourteenth Amendment protects fundamental rights — not the forum which the state may designate for the protection of such rights. See *Bain Peanut Company v. Pinson*, 282 U. S. 499, 75 L. ed. 482; *Cincinnati St. R. Co. v. Snell*, 193 U. S. 30, 48 L. ed. 604-607.

In the case of *Gasquet v. Lapeyre*, 242 U. S. 367, 61 L. ed. 367, this Court refused to review a decision of the Supreme Court of Louisiana in a case involving the constitutionality of that Court's ruling involving the jurisdiction of a state court, saying:

> "And, as our decisions show, there is nothing in the clauses of the 14th Amendment guarantying due process and equal protection which converts an

> issue respecting the jurisdiction of a state court under the Constitution and statutes of the state into anything other than a question of state law, the decision of which by the state court of last resort is binding upon this court."

On at least two occasions applications to this Court were made to review venue statutes in libel suits on the ground that a provision permitting suits in any country or parish where the libel was published violated the 14th Amendment. The Supreme Court refused such application. Applications were sought in two cases from Missouri, one of which is cited in the defendants' brief. These cases are: *Cook v. Globe Printing Company of St. Louis*, 127 SW 332; and *Julian v. K. C. Star Co.*, 107 SW 496. Both of these cases involved a Missouri statute which provided that suits against corporations may be commenced within the county where the cause of action occurs or in any county where the corporation may have an office or agent for the transaction of its business. In the *Cook* case suit was brought in Randolph County at Huntsville, Missouri, although the newspaper, The St. Louis Globe Democrat, was printed in St. Louis and the corporation owning the paper was domiciled there. The Missouri Supreme Court upheld the venue in Randolph County and the newspaper sought writs from the Supreme Court of the United States. The application for writs was denied. See *Globe Printing Co. of St. Louis v. Cook*, 220 U. S. 603, 55 L. ed. 604-5.

The *Julian* case involved a similar question and an application to the Supreme Court of the United States

for writs was made. The writs were denied. See *K. C. Star Co. v. Julian*, 215 U. S. 589, 54 L. ed. 340.

There is nothing in the Louisiana statute which restricts the right of the defendants to publish news concerning any person in public life where the publications are based on true facts and are not done maliciously to injure the reputation of the person involved. No newspaper has any right to publish scurrilous and untrue remarks about any person and with immunity from legal process. Libel and slander are not only civil offenses but are criminal under the law. Defendants and Appellants have suggested no reason why they might choose the forum where they will defend such acts.

Freedom of speech is freedom to tell the truth and comment fairly on facts, and not a license to spread damaging falsehoods in the guise of news gathering and dissemination. See *Sweeney v. Schenectady Union Publishing Company*, 122 F. 2d. 288, Aff. 316 U. S. 642, 86 L. ed. 1727; *Beauharnais v. Illinois*, 343 U. S. 266, 96 L. ed. 919, 932; *Roth v. U. S.*, 354 U. S. 476, 483, 1 L. ed. 2d 1498, 1506; *Robertson v. Baldwin*, 165 U. S. 281, 41 L. ed. 715.

CONCLUSION

It is respectfully submitted that the Appellants present no substantial question for the decision of this Court and that the questions presented have already

been decided and have been foreclosed by the previous decisions of this Court.

Respectfully submitted,

.....

W. SCOTT WILKINSON
Post Office Box 1707
Shreveport, Louisiana

CLYDE J. WATTS
219 Couch Drive
Oklahoma City, Oklahoma

Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of the Supreme Court of the United States and that on the ..... day of September, 1964, I served a copy of the above and foregoing Motion to Dismiss and Alternative Motion to Affirm together with supporting brief on the defendants, The Associated Press and The Times-Picayune Publishing Company, by mailing copies of the same properly addressed and postage prepaid to their attorneys of record in this cause.

.....

Attorney for EDWIN A. WALKER,
Appellee

Office Supreme Court, U.S.
FILED
DEC 8 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 449

THE ASSOCIATED PRESS, ET AL,
Appellants,

versus

EDWIN A. WALKER,
Appellee.

On Appeal from the Court of Appeal, Second Circuit, State of Louisiana.

APPLICATION FOR REHEARING.

BILLY R. PESNELL,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Attorney for The Associated Press.

ASHTON PHELPS,
Hibernia Bank Building,
New Orleans, Louisiana,
Attorney for The Times-Picayune Publishing Corporation.

HARGROVE, GUYTON, VAN HOOK and RAMEY,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Of Counsel for The Associated Press.

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Hibernia Bank Building,
New Orleans, Louisiana,
Of Counsel for The Times-Picayune Publishing Corporation.

HAUSER PRINTING CO., INC., NEW ORLEANS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 449

THE ASSOCIATED PRESS, ET AL,

Appellants,

versus

EDWIN A. WALKER,

Appellee.

On Appeal from the Court of Appeal, Second Circuit, State of Louisiana.

APPLICATION FOR REHEARING

The petition of THE ASSOCIATED PRESS and THE TIMES-PICAYUNE PUBLISHING CORPORATION, respectfully asks the Court to reconsider its refusal, on November 16, 1964, to note jurisdiction of their appeal. Since that time, on or about Monday, November 23, 1964, the Supreme Court of Georgia, in the case of *Rives v. Atlanta Newspapers, Inc.*, has rendered a decision squarely in conflict with the decision of the Supreme Court of Louisiana on the basic issue of the applicability of the "single publication" doctrine as applied to newspapers. The Georgia decision was four to three in favor of application of that doctrine, while the Louisiana Supreme Court decided four to two against the application of the doctrine.

Your Honors will almost certainly be met with an application for certiorari from the *Rives* case, and it seems to us appropriate to consider both cases at the same time. In any event, the issue is one directly related to the First Amendment to the Constitution of the United States, in very much the same manner as was the definition of malice and the protection of fair comment on the activities of public officials in the *Sullivan* and *Garrison* cases. If anything, the protection of newspapers from suits in outlying areas, both within and without their home States is a matter of more vital concern. As the Supreme Court of Georgia said in the *Rives* case:

> "To allow a suit for damages each time a different person sees the newspaper would unreasonably shackle the press and might quickly bankrupt it thus doing great harm to both the publisher and the reader."

We had sought originally, and again urge the Court, to consider our appeal from the point of view of the First Amendment to the Constitution of the United States involving freedom of speech and the press.

The other point to which our appeal was directed and which we then believed, and still believe, confers jurisdiction as of right on this Court is Title 28 U.S.C.A., Section 1257(2), allowing appeals from State court decisions sustaining the validity of State statutes alleged to violate the United States Constitution. See our original Jurisdictional Statement, pages 2, 3, 4 and 5.

We had thought and argued that the matter of whether or not these defendant-applicants could be forced to trial in any parish in the State of Louisiana presented a constitutional issue as to which a right of appeal lay. The present case, involving as it does, the activities of

Major General Edwin A. Walker, plaintiff, in the Oxford, Mississippi incidents relating to the admission of James Meredith, is obviously fraught with political overtones. To allow this plaintiff to select arbitrarily as a forum Caddo Parish where, according to the latest presidential election returns, President Johnson received less than twenty percent of the vote, rather than Orleans Parish, where President Johnson received over fifty percent of the vote, and where the libel, if any, was actually committed, seems to us to work an injustice in libel cases in violation of the First Amendment protecting freedom of speech and of the press.

There is no other field of tort law in which the Louisiana courts permit a plaintiff to select a forum merely on the basis of incidental damage rather than tort or principal damage. This discrimination alone, we believe, justifies the hearing of our case.

Had the Louisiana Legislature enacted a statute which said that venue in all tort cases except those involving libel actions must be had in the parish (county) where the damage was done, except that in libel cases venue could be had in any parish wherein there was incidental damage, we have no doubt but that this Court would have found such a statute to be a violation of the Constitution and would have noted jurisdiction under 28 U.S.C.A. Section 1257(2). This the Legislature of Louisiana did not do. On the contrary, that legislature provided, in Article 74 of the Louisiana Code of Civil Procedure, that:

> "An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or

quasi offense may be brought in the parish where the wrongful conduct occurred or may occur. As used herein, the words 'offense or quasi offense' include a nuisance and a violation of Article 667 of the Civil Code. As amended Acts 1962, No. 92, § 1."

However, the Louisiana Supreme Court, by a vote of four to two, the Chief Justice dissenting, has, in effect, interpreted Article 74 as though the legislature had adopted the hypothetical statute.

The issues involved in this case and in the *Rives* case arise over and over again, and we respectfully urge the Court to grant us a hearing to set at rest this fundamental issue.

Dated: December 7, 1964

BILLY R. PESNELL,
Post Office Box 1574,
867 Texas Eastern Building,
Shreveport, Louisiana,
Attorney for The Associated Press.

ASHTON PHELPS,
Hibernia Bank Building,
New Orleans, Louisiana,
Attorney for The Times-Picayune Publishing Corporation.

CERTIFICATE OF COUNSEL

The undersigned, Ashton Phelps, attorney for Petitioner, The Times-Picayune Publishing Corporation, hereby certifies that the petition for rehearing filed in this cause is presented in good faith, that in his judgment said petition is restricted to the grounds specified in paragraph 2 of Rule 33 as amended, and that said petition for rehearing is not interposed for delay.

Attorney for Petitioner, The Times-Picayune Publishing Corporation.

PROOF OF SERVICE

I, Ashton Phelps, attorney for The Times-Picayune Publishing Corporation, one of the petitioners and joint appellants herein, and a member of the bar of the Supreme Court of the United States, certify that on the 7th day of December, 1964, I served a copy of this Application for Rehearing on Edwin A. Walker, plaintiff and appellee herein, by mailing the same in a duly and properly addressed envelope, first class postage prepaid, to his attorney of record:

Mr. W. Scott Wilkinson
Wilkinson, Lewis, Woods and Carmody
Post Office Box 1707
Shreveport, Louisiana

New Orleans, Louisiana, December 7, 1964.

ASHTON PHELPS